IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

Crl.Rev.Pet.No. 1231 of 2005()

CRA.140/2004 of ADDL. SESSIONS COURT, THRISSUR
CC.705/2000 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD

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REVN. PETITIONER: APPELLANT/ACCUSED.

AMINAKUTTY, W/O.KADAMBULLY KASIM,
CHOONDAL VILLAGE AND DESOM, THALAPPILLY TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.K.A.SATHEESA BABU

RESPONDENTS: COMPLAINANT AND STATE.

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1. GOPI, S/O.KANDAMPULLY APPUKUTTAN,
PELAKKAT PAYYOOR DESOM, CHOONDAL VILLAGE,
THALAPPILLY TALUK, THRISSUR DISTRICT.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.JIJO PAUL
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 1231 OF 2005

Dated this the 19th day of October, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in C.C. No.705/2000 on the file of the J.F.C.M., Chavakkad challenges the conviction entered and the sentence passed against her for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause (b) of the proviso to Section 138 of the Act and that the Revision

Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice.

4. The learned counsel for the revision petitioner made the following further submissions before me:-

The cheque in question was given along with two other signed blank cheques as a security for the loan of Rs.5,000/- availed by the revision petitioner from the complainant who is a blind man. The revision petitioner is an illiterate Muslim lady. This version of the revision petitioner was disbelieved by the courts below for the reason that she did not mount the witness box. It is not necessary for the accused to enter the witness box in every case as was held by the Apex court in ***Narayana Menon Vs. State of Kerala*** [2006 (3) KLT 404]. The accused can highlight and take advantage of the inherent improbabilities of the case of the complainant. It is highly improbable that a blind man like the complainant would have advanced such a huge amount of Rs.50,000/- without even a scrap of paper to evidence the borrowal.

5. I am afraid that I cannot agree with the above submissions. It is true that it is not necessary for the accused to

enter the witness box in each and every case and he can take advantage of the inherent improbabilities of the case of the complainant as well. But this is a case in which the accused offered an explanation for the custody of the cheque leaf belonging to him with the complainant. The version given in support of that was too improbable to merit acceptance. In the normal course, nobody will insist on three signed blank cheques while advancing a relatively small amount of Rs.5,000/-. The accused did not send any reply to the statutory notice as well. If the cheque in question was offered only as a security and not intended to be acted upon, as a reasonable and prudent person, the accused would have countermanded payment with the drawee bank. That also was not done. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as

to whether a proper sentence has been imposed on the Revision Petitioner. I am, however, inclined to modify the sentence imposed on the revision petitioner provided she complies with the condition hereinafter mentioned. Accordingly, if the revision petitioner pays to the 1st respondent complainant by way of compensation under section 357(3) Cr.P.C. a sum of Rs.50,000/- (Rupees fifty thousand only) within five months from today, then she need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioner commits default in making the payment as aforesaid, she shall undergo simple imprisonment for three months by way of default sentence. Money, if any, paid by the revision petitioner pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioner.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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